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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.57 of 1991

Date of decision:1.11.2006

The Commissioner of Income Tax, Patiala

...Appellant

Versus

M/S Model Line colonizer Pvt. Ltd. Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.S.K.Garg Narwana, Advocate.

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JUDGMENT

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 18.7.1990 passed in I.T.A.No.332 of 1986, in respect of the assessment year 1980-81:-

> "Whether on the facts and in the circumstance of the case, the Appellate Tribunal erred in law in holding that the amount received by the assessee by way of advances or earnest money as a result of agreements to sell plots did not constitute revenue receipts in its hands as no sale deed had yet been executed?"

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The Assessing Officer in the course of assessment made addition on account of amount received by the assessee as earnest money as a result of agreements to sell plots, which were not followed by execution of any sale deed. This addition was set aside by the C.I.T.(A), which was upheld by the Tribunal following its earlier judgment in M/S Dhir & Co.Colonisers (P) Ltd. by holding that facts were facts were identical.

Counsel for the Revenue points out that reference arising out of the order of the Tribunal in M/S Dhir and Co. Colonisers has been decided by this Court on 29.9.2006 being ITR No.102 to 104 of 1990- **The Commissioner of Income Tax, Patiala Vs. M/S Dhir & Co.Colonisers (P) Limited, Ludhiana** and after referring to the judgment of Hon'ble Supreme Court in **CIT Bombay etc. Vs. M/S Podar Cement Private Limited etc.,** AIR 1997 SC 2523 and judgment of the Hon'ble Kerala High Court in **CIT Vs. Travancore Rubber & Tea Co.Limited** (1991) 190 ITR 508, this Court observed:-

> "In the present case, the Tribunal held that unless the title of the assessee was extinguished, land was to be treated to continue as stock in trade of the assessee and the amounts received on account of sale of plots were not trading receipts. In view of law laid down by the Hon'ble Supreme court, this view cannot be approved. Once the possession of plots was transferred and

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transferees even made constructions, the dominion over the property passed on to the transferees and the amounts received by the assessee could not be held to be mere deposits and property transferred could not be held to be stock in trade of the assessee. The amount received by the assessee had, thus, to be revenue receipt in its hands."

None appears for the assessee.

In view of the earlier judgment of this Court, the question referred is answered in favour of the Revenue and against the assessee.

(Adarsh Kumar Goel)
Judge

November 1 ,2006
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(Rajesh Bindal)
Judge